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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

KERN, INYO AND MONO COUNTIES
BUILDING AND CONSTRUCTION TRADES
COUNCIL

and

GOLDEN QUEEN MINING CO., LLC

CASE 31-CE-129697

EXCEPTIONS TO THE
DECISION OF THE
ADMINISTRATIVE LAW
JUDGE

Respondent hereby takes the following exceptions to the Decision of the Administrative Law Judge (ALJ):

- | | | |
|-------------|-----------|---|
| Exception 1 | P.6:13-16 | According to Graeme, whose testimony I credit, at the time he signed the PLA, he was unaware of any conflict in the Mojave area between union and nonunion employees and that during negotiations for the PLA, the parties never discussed entering into the PLA to avoid jobsite friction between union and nonunion employees. |
| Exception 2 | P.6:16-19 | Graeme testified that he never told the unions involved that the Employer would act as its own general contractor and that it wanted to choose subcontractors on the project, that it would supervise the day-to-day onsite construction work, and that it wanted to directly hire employees in the building and construction trades. |
| Exception 3 | P.7:1-7 | I found Rolow's testimony concerning the negotiations for the PLA and the Employer's requests for assistance with the |

permitting process vague and lacking in the specificity necessary to credit his testimony. Given Graeme's credible testimony that the Employer at all times intended to hire an EPCM general contractor and the documentary evidence in the form of M3 Engineering's feasibility report that the Employer intended to hire an EPCM general contractor, I find Rolow's 18-year-old testimony incredibly convenient and tailored to Respondent's position.

- Exception 4 P.7:35-39 In view of Spaulding's earlier testimony that he believed the Employer hired no employees for the Soledad Project but used only general contractors and subcontractors and given Klingmann's total lack of expertise in construction, I cannot credit Spaulding's testimony that Raytis would have represented Klingmann to be the Employer's construction manager.
- Exception 5 P.8:5-8 Klingmann, after identifying and performing the specifications for each component piece of the mine, then negotiated with one or two contractors for each mine component as a turnkey project, i.e., fully completed by the contractor.
- Exception 6 P.8:8-10 The contractors proceed with all aspects of the actual construction, and the Employer had only a coordination role in the process.
- Exception 7 P.8:22-26 The uncontradicted and fully credited testimony of Klingmann was that each contractor was responsible for having its own manager employees, equipment, materials, and supplies that are needed for construction, that the Employer did not supervise any of the contractors' employees on the construction site, including setting work schedules or terms and conditions of employment.
- Exception 8 P.10:19-21 As noted above, there is no credible evidence that the Employer told a union representative that it intended to contract with subcontractors on the Soledad Project.
- Exception 9 P.14:37-39 There is not a scintilla of evidence that the Employer retained control over the labor relations of the turnkey contractors or their subcontractors by supervising them, selecting the subs or directing their work in any way.
- Exception 10 P.15:26-29 That the Employer purchased materials and equipment to be installed on its project, does not establish that it in any way controlled the manner or means of performance of the contractors and subcontractors or supervised them in a manner that reflects it controlled the labor relations on its project.
- Exception 11 P.15:47-50 [t]he parties have stipulated that Respondent reaffirmed the PLA on about May 13, 2014, when it requested arbitration of a

	grievance alleging that the Employer had failed to comply with provisions of the PLA.
Exception 12 P.16:27-29	[t]here is insufficient evidence to establish that the PLA was entered into by the parties with the mutual understanding that the Employer would act as its own general contractor or hire only union contractors.
Exception 13 P.16:33-35	Thus the element of mutuality is missing from this case. Since Respondent has failed to establish that there was a mutual understanding between it and the Employer that the Employer would act as its own general contractor, Respondent's estoppel defense is rejected.
Exception 14 P.16:41-45	Based on the above, I find that the Employer is not now and since at least 1996 has not been a construction industry employer within the meaning of the first proviso to Section 8(e) of the Act. Having so found, the PLA is not protected by the first proviso to Section 8(e) of the Act and violates the Act as alleged in the complaint.
Exception 15 P.17:8-12	Conclusion of Law No. 3. Respondent has violated Section 8(e) of the Act by entering into and enforcing an agreement requiring Golden Queen Mining, LLC. to hire only union contractors or union subcontractors for its construction projects, and by applying those contractual provisions to a construction site where Golden Queen Mining, LLC is not an employer in the construction industry within the meaning of the first proviso to Section 8(e) of the Act.
Exception 16 P.17:17-24	The Remedy.
Exception 17 P.17:31-33	The Order. Cease and desist from entering into, maintaining, giving effect to or enforcing those provisions of our August 20, 1997 PLA with Golden Queen Mining LLC to the extent found unlawful.
Exception 18 P.17:37-38	The Order. Seek dismissal of the May 13, 2014 request for arbitration under article 8, section 8.3, Step 3(a) of the PLA.
Exception 19 P.17:40-43	The Order. Within 14 days after service by the Region, post at their offices, meeting halls, and locations where notices to their members are customarily posted, copies of the attached notice marked "Appendix." ⁵² Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by authorized representatives shall be posted by the Respondent immediately after receipt and maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable

steps shall be taken to ensure those notices are not altered, defaced, or covered by any other material.

Exception 20 P.18:6-8

The Order. Within 21 days after service by the Region, file with the Regional Director in a sworn certificate of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken.

Dated: February 16, 2016

Respectfully Submitted

Law Office of Ray Van der Nat
A Professional Corporation

/s/ Ray Van der Nat
RAY VAN DER NAT
Attorney for Respondent/Union

CERTIFICATE OF SERVICE

I hereby certify that I have caused an original version of the foregoing Exceptions to the Decision of the Administrative Law Judge in .pdf format to be filed electronically with the Executive Secretary of the National Labor Relations Board on this 16th day of February 2016.

I further certify that I have caused copies of the foregoing Exceptions in .pdf format, to be served via electronic mail and U.S. mail on the following:

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